Cp385.1
A86b

ATLANTIC & N.C. RAILROAD CO. LEASE

THE LIBRARY OF THE
UNIVERSITY OF
NORTH CAROLINA

THE COLLECTION OF
NORTH CAROLINIANA
PRESENTED BY

Department of Archives
and History

Cp385.1
A86L

UNIVERSITY OF N.C. AT CHAPEL HILL
00042093590

FOR USE ONLY IN
THE NORTH CAROLINA COLLECTION

THIS TITLE HAS BEEN MICROFILMED

A 86

Atlantic & N. C. Railroad Co.

TO THE

Howland Improvement Co.

LEASE

Dated September 1st, 1904.

Digitized by the Internet Archive
in 2012 with funding from
University of North Carolina at Chapel Hill

http://www.archive.org/details/tohowlandimprove00atla

LEASE

TO THE

HOWLAND IMPROVEMENT COMPANY.

This indenture, made this the first day of September, A. D. 1904, by and between the Atlantic & North Carolina Railroad Company, a corporation incorporated by the State of North Carolina, party of the first part, and hereinafter called the Lessor, and the Howland Improvement Company, a corporation incorporated also by the State of North Carolina, party of the second part, and hereinafter called the Lessee, witnesseth:

That whereas, it is provided under section eighteen of the Act of the General Assembly of North Carolina, incorporating the Atlantic & North Carolina Railroad Company, "That the said Company may, when they see proper, farm out the right of transporation over said railroad, subject to the rules above mentioned, and the said Company and every person who may have received from them the right of transporation of goods, wares and produce on said railroad, shall be deemed a common carrier as respects all goods, wares and merchandise entrusted to them:"

And whereas, at a meeting of the Stockholders of the said Atlantic & North Carolina Railroad Company, held in the City of New Bern and adjourned over to and continued at Morehead City, in the said State of North Carolina, after due notice, on the first day of September, 1904, a proposition to lease the road, franchises, property, rights, privileges of every kind whatsoever, was made by R. S. Howland, a citizen of the City of Asheville, in the State aforesaid, for and on behalf of the Howland Improvement Company, the Lessee hereinbefore named, and the same was duly considered, and being so considered was submitted to a vote of the Stockholders of said At-Atlantic & North Carolina Railroad Co. and the same was approved by a majority of the private stockholders and the State of North Carolina, as provided in the Charter and the by-laws of the said Atlantic & North Carolina Railroad Company:

And whereas, it now seems to the Atlantic & North Carolina Railroad Company to be fit and judicious and to the advantage of the said Company to farm out its entire railroad, with all its franchises, rights of transporation, works, and property of every kind thereunto belonging and used and connected therewith, as hereinafter described, to the Howland Improvement Company, with the reservations hereinafter particularly set forth:

Now therefore, for and in consideration of the several sums of money, rents, covenants, agreements, and stipulations hereinafter specified and agreed to be paid, kept, and performed by the Howland Improvement Company, the said Lessor, namely: The Atlantic & North Carolina Railroad Company, has demised, let, hired, farmed out, and delivered and by these presents doth demise, let, hire, farm out and deliver to the said Lessee, namely, the Howland Improvement Company, the entire railroad of the Lessor, with all its franchises, privileges, rights of transportation, works, and property, including among other things its superstructure, road bed, right of way incident thereto, situated in the State of North Carolina, and extending from Morehead City, in the County of Carteret, to the City of Goldsboro, in the County of Wayne, in the said State; and also all depots, houses, shops, piers, wharves, water fronts, water privileges, buildings, fixtures, engines, cars, and railroad equipment, and all franchises, rights and privileges and other things, if any, of whatsoever kind or nature to the said Lessor belonging, and necessary, incident, and appurtenant to the free, easy and convenient operation of the said railroad leased hereby and now or heretofore used in that behalf; and also including the property situated in the said Morehead City, known as the Atlantic Hotel, with all its rights, privileges, hereditaments and appurtenances, and the furniture, fixtures, equipments and appliances now therein or used therewith, and also all lands and interests in lands, timber, timber rights and contracts now owned by the Lessor, for the full term of ninety-one (91) years and four (4) months from and after the first day of September, 1904, and to be fully ended, commencing the first day of September, 1904.

And the said Lessor, for itself, its successors and assigns doth covenant and agree to and with the Lessee, its successors and assigns, that at the time of the ensealing and delivery of these presents, it is seized and possessed and entitled to the premises, property, rights, franchises, and privileges above conveyed in the estate and for the term demised, except as is hereinafter stated, and has good right, full power, and lawful authority to lease, farm out, convey and deliver the same in the form and manner aforesaid, and that the same are free and clear from all liens and encumbrances of whatever kind or nature soever, save and except the lien and encumbrances of a certain deed of trust or mortgage to secure certain coupon bonds of the said Lessor heretofore issued and now outstanding, and amounting to about Three Hundred and Twenty-five Thousand ($325,000) Dollars; that the said Lessee, its successors and assigns, shall during the entire term aforesaid have and enjoy quiet, peaceful, and uninterrupted possession of all the property, rights, privileges, franchises, and estate hereinbefore leased and farmed

out; and that the said Lessor and its stockholders and directors will not do anything or take any action as such stockholders and directors that may or can interfere in any way whatsoever with the free use and operation and conveyance of said railroad and other properties so hired, let, farmed out, and delivered to the said Lessee, according to the terms and intents of these presents.

And for and in consideration of such demising, letting, hiring, farming out, and delivery of said railroad, works, and property, including roadbed, superstructure, right of way, and all transportation, depots, houses, buildings, shops, fixtures, engines, cars, franchises, and privileges, and other things incident and appurtenant thereto, the Lessee doth covenant with and oblige itself to the Lessor to pay to it rent as follows:

From September 1st, 1904, to December 31st, 1904, the sum of Thirteen Thousand Four Hundred and Seventy-nine ($13,479,00) Dollars, which shall be paid on or before the first day of February, 1905; and for and during the next suceeding twenty years, after the first day of January, 1905, the sum of Fifty-three Thousand Nine Hundred and Sixteen ($53,916.00) Dollars annually, to be paid in equal installments of Twenty-six Thousand Nine Hundred and Fifty-Eight ($26,958.00) Dollars each on the first day of July and first day of January in each of the said years; and for and during the next succeeding ten years, from and after the first day of January, 1925, the sum of Sixty-two Thousand Nine Hundred and Two ($62,902.00) Dollars annually, to be paid in equal installments of Thirty-one Thousand Four Hundred and Fifty-one ($31,451.) Dollars each on the first day of July and the first day of January of each of the said years; and for and during the next succeeding ten years, from and after the first day of January, 1935, the sum of Seventy-one Thousand Eight Hundred and Eighty-eight ($71,888.00) Dollars annually to be paid in equal installments of Thirty-five Thousand Nine Hundred and Forty-four ($35,944.00) Dollars each, on the first day of July and first day of January of each of the said years; and for and during the next succeeding ten years, from and after the first day of January, 1945, the sum of Eighty Thousand Eight Hundred and Seventy-four ($80,874.00) Dollars annually, to be paid in two equal installments of Forty Thousand Four Hundred and Thirty seven ($40,437.00) Dollars each, on the first day of July and the first day of January of each of the said years; and for and during the next succeeding ten years, from and after the first day of January, 1955, the sum of Eighty-nine Thousand Eight Hundred and Sixty ($89,860.00) Dollars annually, to be paid in two equal installments of Forty-four Thousand Nine Hundred and Thirty ($44,930.00) Dollars each, payable on the first day of July and the first day of January of each of the said years; and for the remainder of the said term the

Lessee will annually pay the sum of One Hundred and Seven Thousand Eight Hundred and Thirty-two ($107,832.00) Dollars, payable in equal installments of Fifty-three Thousand Nine Hundred and Sixteen ($53,916.) Dollars each, on the first day of July and on the first day of January of each and every year until the expiration of the said term.

But it is expressly stipulated and agreed between the parties hereto that the Lessee shall not be liable for any rents until he shall have been put into actual possession of the property hereby demised.

And the said Lessee does further covenant to and with the said Lessor that it shall pay, in addition to the rental reserved as aforesaid, and as a part of the rent to be paid for the property herein described, all taxes lawfully imposed upon the said leased property or upon the franchises of the said Atlantic & North Carolina Railroad, or its income whether by the State of North Carolina or any County, City, Town, or Township thereof, or by the United States; all of such taxes shall be paid by the Lessee so as to entirely relieve the Lessor from payment of taxes of any nature whatever during the continuance of this lease, upon the property leased or upon the franchises of the Lessor, or its income from the leased property; and the said Lessee does further covenant to and with the said Lessor that it will pay, in addition to the rental reserved as aforesaid, and as a part of the rent to be paid for the property herein described, during the continuance of the said lease, the interest accruing on the present bonded indebtedness of the Atlantic & North Carolina Railroad Company, as the same falls due (but the Lessee shall not be in any manner liable for the payment of the principal of the said bonded indebtedness), provided, however, that the principal of the said bonded indebtedness does not exceed Three Hundred and Twenty-five Thousand ($325,000) Dollars; and provided further that if the said indebtedness shall be refunded at any time during the continuance of this lease, the rate of interest shall be the lowest practicable rate at which the said refunded bonds can be sold at par; and the Lessee, its successors and assigns shall have the privilege of placing said refunded bonds at par, and the Lessee, its successors and assigns shall not be required or liable to pay on this account a greater rate of interest than that which the said refunded debt shall bear, and in no event shall the Lessee, its successors and assigns, be required to pay a greater rate of interest thereon than that which the said indebtedness now bears, to-wit, six per centum per annum.

And the Lessee doth further covenant to and with the Lessor, its successors and assigns, that it will keep, during the continuance of the said lease, the warehouses, depots, offices, shops, and other buildings now erected and used and necessary to the operation of the said railway, and also the Atlantic Hotel at Morehead City aforesaid, in-

sured in some safe and reliable insurance Company or Companies lawfully doing business within the State of North Carolina, in the aggregate sum of not less than Sixty Thousand ($60,000) Dollars, of which $18,000 shall be on the Atlantic Hotel at Morehead City, until the balance of the purchase money hereinafter mentioned is paid.

And the Lessee doth further covenant to and with the Lessor, its successors and assigns, that it, the said Lessee, its successors and assigns, will, within three years from the delivery to it of the property hereby demised, expend and apply, or cause to be expended and applied, to the permanent betterment of the roadbed, terminal facilities, and the equipment of the said railroad the sum of Two Hundred and Fifty Thousand ($250,000) Dollars.

And the Lessee doth further covenant to and with the Lessor, its successors and assigns, that it will keep the said railroad, road-bed, superstructure, depots, buildings, houses, shops, engines, cars, fixtures, and other property of every kind and part thereof, so hired, let, farmed out, and delivered, in equally as good condition and repair as the property is at the date of this lease, or to keep in the place of the same like things of equally good condition and repair; and to return at the end of the said term, or at other termination of the said lease, to the Lessor, its successors and assigns, the said railroad, road-bed, superstructure, depots, houses, buildings, shops, engines, cars, fixtures, and other property, and all and every part thereof, in like good condition and repair, or other property when any part of said property shall be worn out, destroyed, or abandoned, as good in quality and substance and in like good order and repair. The condition of the said railroad and property under this provision to be ascertained by examination and inspection by experts or their umpire, as hereinafter provided.

But there shall be no claim or liability during the continuance of this lease, or at its termination, by the Lessee, its successors or assigns, upon the Lessor, its successors or assigns, for any improvement of said property over the condition of the said property at the date of this lease, but all such improvements shall be and remain the property of the Lessor, its successors or assigns, subject to the provisions of the lease as hereinafter set forth.

And the Lessee further covenants to and with the Lessor, its successors and assigns, to indemnify and save harmless the said Lessor against and from any and all damages which may be recovered from or against it, according to law, by reason of any failure of the said Lessee, its agents, employees, successors or assigns, to perform in all things, or its or their violation of, their duties and obligations, whereby the Lessor may become liable to any party injured or sustaining injury in his or her person, reputation or prop-

erty; and the Lessor, on its part, covenants to and with the Lessee that whenever any suit or action shall be instituted against it, the said Lessor, for any causes of action for which the Lessee would be liable to the Lessor under the terms of this lease, the Lessor will immediately give due notice and tender defense of such suit or action to the Lessee—such notice to be given to the resident agent of the Lessee at either of the following named places, to-wit, Morehead City, New Bern, Kinston, or Goldsboro, all in the State of North Carolina.

And Whereas, there is now in existence a contract between the owners of the one part, and the Lessor, of the other part, whereby the said owners have agreed to sell and convey to the Lessor the property in Morehead City known as the Atlantic Hotel, for the sum of about Fourteen Thousand ($14,000) Dollars, and only a portion thereof, to-wit, about Two Thousand ($2,000) Dollars has been paid, and the remainder is to be paid in successive annual installments of One Thousand ($1000.00) Dollars each, with interest. The Lessee covenants that in addition to the rental agreed by it to be paid as hereinbefore set forth, and as a part of the said rental of the said demised property, it will pay the said installments yet remaining due upon the purchase of the said Atlantic Hotel property; *Provided*, however, it shall not be required and does not undertake to pay a greater sum than Twelve Thousand ($12,000) Dollars and its interest, nor to pay this except in successive twelve annual installments.

And the Lessee doth futher covenant to and with the Lessor, its successors and assigns, that it will, during the continuance of said lease maintain in the operation of said railroad a regular train service, both passenger and freight, at least equal to that which has been in operation for the twelve months prior to the execution of this lease, that it will not at any time during the continuance of the said term fix or establish rates on freight called local freight at a higher average price or rate from station to station than the average rate for local freight tariff as lawfully fixed and established by the Lessor at the time of the execution of this lease; and the rates for the transportation of passengers shall not exceed the local rates as lawfully fixed and established on the date last above made.

And to secure the prompt and faithful payment of the said rents and sums as above stipulated to be paid, and of all taxes payable on the demised railroad and property as herein provided, and the faithful performance of the covenants entered into herein by the Lessee, as herein set forth, the Lessee does covenant to and with the Lessor, its successors and assigns, that it will deposit and keep on deposit with the Treasurer of the State of North Carolina, or any such bank or banks, or other depository, as may be approved by the Directors of the Lessor, from year to year, and all the time

during the continuance of the said lease, the sum of One Hundred Thousand ($100,000) Dollars in United States Bonds, or bonds of the State North Carolina, or other marketable securities acceptable to the Directors of the Lessor and having a market value of not less than said sum, which said deposit and security, or any equivalent for it which may be substituted therefor, may be applied by the Lessor to the satisfaction and discharge of any such sum of money so semi-annually due and remaining unpaid, or if any such taxes due and remaining unpaid, interest on funded debt of Lessor, or any judgment or judgments recovered in any court of the State or of the United States, when finally adjudicated, for any tort, wrong, injury, negligence, default, done, made, or permitted by the Lessee, its successors, assigns, employees, agents, or servants, for which the Lessor shall be adjudged liable, whether the Lessor is sued jointly with or separately from the Lessee, or any final judgment or judgments recovered by the Lessor against the Lessee for any other breach of this contract, provided that the Lessor shall have given to the Lessee a notice of the suit hereinbefore provided for; and in case of any application of said deposit or any part thereof for such purposes, then the Lessee shall renew the same from time to time, as often as such application of any such deposit may become necessary; but any and all bonds so deposited shall be deposited and held in such manner as to enable the Lessee, its successors or assigns, to receive the interest accruing thereon from time to time as the same shall become due and payable.

But if the Lessee, its successors or assigns, shall make default in the payment of the sum of money the Lessee has agreed to pay on the rental for the said railroad, as hereinbefore provided, for thirty days or more, after the same shall become due and payable, or if it shall make such default in the payment of any part thereof, or shall fail to pay all taxes lawfully levied and assessed against the Lessor, which by the terms of this lease it has agreed to pay for and on account of the party of the first part; or, if it shall fail to keep on deposit said sum of money or bonds as it has covenanted to do, or if it shall fail to keep the property enumerated insured as hereinbefore provided, then the Lessor shall, upon giving to the Lessee at least thirty days notice, have the right, should the Lessee still remain in default, to dispose of and apply the deposit to any unpaid rent or unpaid taxes, or unpaid insurance, or interest on funded debt of Lessor, or unpaid judgments lawfully rendered against the Lessor, which by the terms of this lease it has agreed to pay for and on account of the Lessor, and shall have the right to enter upon and resume possession of the said railroad and of the other property, rights, franchises, of every kind and description, and the term and estate of the Lessee herein shall at once cease and determine; *Provi-*

ded, however, this stipulation shall not be so construed as to abridge or discharge any of the said covenants which require and provide for the payment of such semi-annual rent, or for every part thereof, and for the payment of the other sums hereinbefore provided, and for the return of the said railroad and other property, according to the terms of such covenants at any termination of said term; and *Provided further*, that the same shall be so construed that the said Lessor shall be entitled to all the rent due at any termination of said lease, and to have the said road and other property of every kind returned as aforesaid, to the said Lessor, and any damage for any failure to so return the same.

It is further mutually agreed by and between the parties that a fair valuation and inventory of the said railroad and all and every part and parcel of the said other property shall be made and taken as soon as practicable, and before the first day of January next, after the execution of these presents, by two competent experts, one to be selected by the Lessor and the other by the Lessee, who shall, in case of disagreement, select an umpire, and the valuation and inventory so made and taken shall be finally established, kept, recognized, and acted upon at all times; and annually thereafter in the first week of October in each year, if the Lessor shall so require, a like valuation and inventory shall be made and taken by like competent experts and their umpire, to be chosen as aforesaid, and in case the said railroad and said property are not in like good condition and repair as provided in the covenants in that respect hereinbefore set out, then the Lessee may have until the first day of January next after such default so to make good said railroad and said other property; and the said party of the first part shall not have the right to enter and take possession of said railroad and other property for such default and breach of such covenant until the said first day of January next after such default; and not then on such account if said default in the meantime shall be repaired to the satisfaction of the said experts or their umpire.

It is further mutually agreed by and between the said parties that at any termination of said lease and term, whether by its own limitation or otherwise, the said railroad and all the said property of every kind whatsoever, shall be valued and an inventory thereof taken by like competent experts and their umpire, to be selected as aforesaid.

It is further mutually agreed by and between the said parties that if the said lease shall be determined otherwise than by its own limitation, the Lessor shall only be entitled to have the rent due at such termination thereof and the interest on the funded debt then accrued, and to have the said railroad and all and every part and parcel of said property returned to it, or damages for failure to do

so, and indemnity for any loss which may be sustained by reason of any default or neglect of the said Lessee as herein imposed.

And it is further mutually agreed by and between the parties that the Lessee, its successors and assigns, shall have leave to change any shops, tracks, houses, and other things, in such way as to promote the convenience of shipments of freight, travel, and the safety of the road and property, without charge to the party of the first part; and shall have also leave, without charge to the Lessor, to change the gauge of the said railroad track, but should it make such change, it shall restore the gauge to what it now is at the termination of the said lease if required so to do by the Lessor, its successors or assigns.

It is further mutually agreed between the parties that within ten days after the execution of these presents, an inventory and valuation shall be had and made of all supplies, fuel, and materials on hand or in store at the said date, and which has been paid for or which may hereafter be paid for by the Lessor, and the Lessee will purchase and take the said supplies, fuel, and material at the valuation so fixed and pay therefor within thirty days thereafter.

And the Lessee doth further covenant to and with the Lessor, its successors and assigns, that it will pay during the continuance of the said lease all the expenses of keeping alive the organization of the Atlantic and North Carolina Railroad Company; and will pay all expenses of inspection to be made from time to time by the experts herein mentioned; *Provided, however*, the maximum amount of such expenses of organization and inspection shall not in any one year exceed Twelve Hundred ($1200.00) Dollars, and the Lessee does not assume and shall not be liable for any other or greater amount on this account.

And Whereas, it may be that the corporate existence of the Lessor may terminate under terms of the act incorporating it and the acts amendatory thereof, at a period prior to the time fixed for the expiration of the lease as hereinbefore provided, it is now mutually covenanted and agreed by and between the parties hereto that in the event there shall be such termination of the corporate existence of the said Lessor, then the Lessee shall have and enjoy its term and estate hereunder until such expiration of the corporate life of the Lessor; but, if the corporate existence of the said Lessor shall be continued by any means to a period equal to or beyond the period limited for the lease hereinbefore, or if the Lessor possesses the power under its present charter, then the Lessee, its successors and assigns, shall have and enjoy all the rights, benefits, estate, and interest which are or have attempted to be conferred upon it by this lease for the said term of ninety-one (91) years and four (4) months.

It is mutually agreed between the parties that the office furniture contained in the offices of the President and Treasurer, in the City of New Bern, belonging to the Lessor, are not included in this lease, but are retained by the said Lessor.

It is further agreed between the parties that all cash on hand and all bills and accounts receivable, due and payable to the Lessor, at the date this lease goes into effect, shall not pass by this conveyance; nor shall the Lessee be liable for any debts of the said Lessor at said date.

In Testimony Whereof, the Atlantic & North Carolina Railroad Company has caused these present to be signed in its name by its President, attested by its Secretary, and its corporate seal to be hereto affixed all by the order of its Stockholders and of its Directors in meetings duly called and held. And the Howland Improvement Company has caused its name to be hereto signed by its President, attested by its Secretary, and its corporate seal to be hereto affixed, all by the order of its stockholders and directors in meetings duly assembled, all on this the day and year first above written.

(Signed)
THE ATLANTIC & NORTH CAROLINA RAILROAD COMPANY,

Attest: By JAMES A. BRYAN, President.
M. MANLY, Sec'y & Treas.
(Seal)

(Signed)
HOWLAND IMPROVEMENT COMPANY,

Attest: By RICHARD S. HOWLAND, President.
WALTER B. GWYN, Sec'y.
(Seal)

NORTH CAROLINA, Craven County.

This is to certify that on the 1st day of September 1904, before me personally came M. Manly, Secretary of the Atlantic & North Carolina Railroad Company, with whom I am personally acquainted, who, being by me duly sworn, says that James A. Bryan is the President, and M. Manly is the Secretary of the Atlantic & North Carolina Railroad Company, the corporation described in, and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was subscribed thereto by the said President, and the said President and Secretary subscribed their names thereto, and said common seal was affixed, all by order of the board of directors of said corporation, and that the said instrument is the act and deed of said corporation.

Witness my hand and notarial seal this the 1st day of September, 1904.

(Signed) ROBERT R. BOYD,

(Seal) Notary Public.

NORTH CAROLINA, Craven County.

This is to certify that on the first day of September 1904, personally came Walter B. Gwyn, Secretary of the Howland Improvement Company, with whom I am personally acquainted, who being by me duly sworn, says that Richard S. Howland is the President, and Walter B. Gwyn, is the Secretary of the Howland Improvement Company, the corporation described in, and which executed the foregoing instrument; that he knows the common seal of said corporation; that the seal affixed to the foregoing instrument is said common seal, and the name of the corporation was described thereto by the said President, and that said President and Secretary subscribed their names thereto, and said common seal was affixed, all by order of the board of directors of said corporation, and that the said instrument is the act and deed of said corporation.

Witness my hand and notarial seal this the 1st day of September, 1904.

(Signed) ROBERT R BOYD,

(Seal) Notary Public.

Microfilmed
SOLINET/ASERL PROJECT